UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TENNESSEE AT KNOXVILLE, TENNESSEE

PAMELA C. PHIBBS,

Plaintiff

vs.

No. 3:16-cv-00156
(Phillips/Guyton)

REVENUE RECOVERY CORPORATION & BUFFALOE & VALLEJO, PLC,

Defendants

DEFENDANT REVENUE RECOVERY CORPORATION'S MEMORANDUM IN SUPPORT OF MOTION FOR PROTECTIVE ORDER

I. INTRODUCTION AND BACKGROUND

On January 11, 2017, RRC and Plaintiff filed a Joint Motion for Protective Order ("Joint Motion"). *See*, Doc. 23. The Joint Motion requested that the Court enter a proposed Protective Order Governing Assertions of Confidentiality and Trade Secret Status ("Protective Order"), which had been agreed to by the parties and was submitted as an exhibit to the Joint Motion. *Id.*; *see also*, Doc. 23-1.

On January 17, 2017, the Court denied the Joint Motion. *See*, Doc. 24. According to the Court's Order, the Joint Motion was denied because the parties failed to show good cause for why the Protective Order should be entered. *Id.* Specifically, the Court's Order outlined how the parties had cast "the widest of nets" and how "imprecise and expansive" the language of the Protective Order was. *Id.* Ultimately, the Court deemed that entry of the Protective Order would effectively surrender the Court's discretion "to decide which materials deserve protection and which do not." *Id.*

At this time, and in light of the Court's denial of the Joint Motion, RRC respectfully moves the Court for an order permitting it to produce confidential business documents – specifically RRC's internal policies and procedures for handling accounts connected to a bankruptcy filing, handling direct consumer disputes, handling indirect consumer disputes, credit reporting and furnishing credit information, and legal action on placed accounts – subject to appropriate limitations on disclosure to persons other than the parties, counsel of record and the Court, in order to preserve the confidential nature of the documents.

II. LAW AND ARGUMENT

RRC does not make this Motion for any purposes of delay, or to prevent Plaintiff from obtaining the documents RRC seeks to protect, but rather in the interests of protecting its business interests and protecting its internal policy documents from public disclosure.

As the Court's Order noted, "under Federal Rule of Civil Procedure 26(c)(1)(G), a court may protect certain business-related materials, including trade secrets and other commercially sensitive information, from disclosure." *Id.* Such business-related materials are precisely the documents that RRC seeks protection of in this case.

As also discussed by the Court's Order, to establish entitlement to protection, a party "must show that '(1) the interest for which protection is sought is an actual trade secret or other confidential business information that is protected under the rule; and (2) there is good cause for the entry of a protective order,' i.e., that 'disclosure will work a clearly defined and serious injury' to the movant." *Kerns v. Caterpillar, Inc.*, 2008 WL 351233, *3 (M.D.Tenn. Feb. 7, 2008), *citing Republic Servs., Inc. v. Liberty Mut. Ins. Cos.*, 2006 WL 1635655, *6 (E.D.Ky. June 9, 2006).

In this case, RRC seeks protection of documents that contain its internal policies and procedures for the handling and collection of accounts placed with it for collection.[1] Again, RRC does not seek an order of non-production for these materials, but rather an order permitting them to be produced to Plaintiff as "confidential" and protecting them from public disclosure. With respect to the first prong of the applicable test, because RRC will continue to collect and handle accounts placed with it in the future, its internal policy documents are deserving of protection as confidential business information. *See, Kerns*, 2008 WL 351233 at *4 (discussing the protection of negotiation strategies because future negotiations would take place); *see also, Miles v. Boeing Co.*, 154 F.R.D. 112, 114 (E.D.Pa. 1994) (discussing how "[t]he subject matter of confidential business information is broad, including a wide variety of business information"), *citing Zenith Radio Corp. v. Matsushita Elec. Indus. Co., Ltd.*, 529 F.Supp. 866, 890 (E.D.Pa. 1981) (outlining various categories of business information deserving of protection); *In re Parmalat Sec. Litig.*, 258 F.R.D 236, 248-249 (S.D.N.Y. June 1, 2009) (suggesting that actual business policies and procedures would be deserving of protection but refusing to protect "'information' that is neither a policy nor a procedure"); *Takata v. Hartford Comprehensive Employee Benefit Serv. Co.*, 283 F.R.D. 617, 621-622 (E.D.Wash. 2012) (claims-handling manual was deserving of protection from public disclosure because of possibility of competitive disadvantage).

With respect to the second prong of the applicable test, if RRC is required to produce its internal policy documents to Plaintiff without any designation that they are to be kept "confidential," RRC's business competitors could obtain those documents from Plaintiff's counsel or from the public record if any were later introduced as evidence. If RRC's business competitors

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1 Specifically, RRC's internal policies and procedures for: handling accounts connected to a bankruptcy filing; handling direct consumer disputes; handling indirect consumer disputes; credit reporting and furnishing credit information; and legal action on placed accounts. *See,* Exhibit A, Affidavit of Chris Adams, ¶ 7.

were to obtain copies of RRC's internal policy documents, RRC would be at a competitive disadvantage in the collection industry. *See,* Adams Aff., ¶ 9. Because the collection industry becomes a more competitive one every year, strategies for the efficient handling of accounts, while at the same time maintaining compliance with the FDCPA and other applicable consumer protection laws, are valuable business assets that separate more successful agencies from less successful ones. *Id.* at ¶¶ 5-6. If RRC's competitors obtained first-hand knowledge of RRC's internal policies and practices, and RRC was without knowledge of its competitors' internal practices, RRC's ability to successfully operate and compete in the marketplace would be compromised. *Id.* at ¶ 9.

For these reasons, RRC respectfully moves the Court for an order permitting it to produce its confidential business documents subject to appropriate limitations on disclosure to persons other than the parties, counsel of record and the Court, in order to preserve the confidential nature of the documents.

III. CONCLUSION

RRC is not interested in frustrating the discovery process or stonewalling Plaintiff's attempts to obtain relevant and discoverable documents or information. Instead, RRC's interest is merely to ensure that its internal policy and procedure documents, once produced, remain "confidential" and protected from public disclosure.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing document has been served this 25th day of January, 2017, upon all counsel or parties as listed below at interest in this cause by delivering a true and exact copy to the offices of said counsel or parties or by placing a copy in the United States mail addressed to said counsel or parties at his/her office, with sufficient postage to carry it to its destination, or by special overnight courier; if the foregoing document has been electronically filed with the Court, this service has been made only upon counsel or parties to whom the Court does not furnish electronic copies of filings.

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